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In the Supreme Court of the United States

OCTOBER TERM, 1979

RETIREMENT FUND TRUST OF THE PLUMBING, HEATING AND PIPING INDUSTRY OF SOUTHERN CALIFORNIA, APPELLANT

v.

EDITH J. JOHNS

ON APPEAL FROM THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT

SOUTHERN CALIFORNIA IBEW-NECA PENSION PLAN, ET AL., PETITIONERS

v.

FRANCES ELIZABETH JOHNSTON AND CLIFFORD ALBERT JOHNSTON

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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This brief is submitted in response to the Court's invitation of October 1, 1979.

QUESTION PRESENTED

The United States will discuss the following question:

Whether Section 514 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1144, preempts state community property law so as to bar enforcement of a state court divorce decree directing a pension plan to pay a share of benefits to the ex-spouse of a participant in the plan.

STATEMENT

1. *No. 78-1422.* Appellee Edith J. Johns and Leroy A. Johns were married in Yuma, Arizona, on June 15, 1945. Sometime thereafter, they moved to California where Leroy Johns became employed in the plumbing, heating and piping industry. As a result of his employment, Johns became a participant in appellant Retirement Fund Trust of the Plumbing, Heating and Piping Industry of Southern California. The trust agreement that appellant established provides for the payment of specified benefits to the retired employee, his family or dependents if certain conditions are met. The trust agreement also contains a "spendthrift" provision that prohibits the assignment or alienation of benefits until they are paid to the retired employee (J.S. 5-6).

In 1976, appellee commenced a proceeding in the Superior Court for San Diego County to dissolve her marriage to Johns. Appellee joined appellant Retirement Fund Trust in that proceeding because she claimed a community property interest in the benefits paid by appellant to her husband. After a hearing upon stipulated facts, the Superior Court ordered appellant to pay appellee her one-half community property interest in Johns' periodic retirement benefits (J.S. 6-7).

The Court of Appeal affirmed (J.S. App. 11-12). It found "no impediment to the fund sending a monthly check to the half-owner Edith. In this day of computer technology, the burden on the fund to make out two checks and envelopes, rather than one, is insignificant" (*id.* at 11). In so ruling, the court held that "the Employee Retirement Income Security Act of Congress (ERISA) does not preempt California law as applied here in matrimonial matters * * *. The spendthrift features of ERISA are not applicable because Edith is an owner, not a creditor" (*id.* at 11-12).

2. *No. 78-1445.* On January 17, 1974, respondent Clifford Albert Johnston filed a petition in the Superior Court for Los Angeles County for dissolution of his marriage to respondent Frances Elizabeth Johnston. In the divorce proceeding, Mrs. Johnston asserted a community property interest in certain funds paid to her husband by petitioners Southern California IBEW-NECA Pension Plan, the National Electrical Benefit Fund, and the International Brotherhood of Electrical Workers Pension Benefit Fund (Pet. 4; Pet. App. 2a). After petitioners failed to obtain a

federal district court injunction against the issuance of any state court order inconsistent with ERISA, the Superior Court ordered petitioners to pay Mrs. Johnston 50% of the pension benefits due Mr. Johnston (Pet. 5; Pet. App. 3a).

The Court of Appeal affirmed (Pet. App. 1a-18a). It held that the pension benefits were community property under California law and that Section 514 of ERISA, 29 U.S.C. 1144, does not preempt California community property law or bar the state court from ordering the partial distribution to Mrs. Johnston of the pension benefits otherwise due her former husband (Pet. App. 7a). The court stated (*id.* at 13a-14a): "We conclude that the preemption clause of ERISA does not effect [*sic*] the operation of California community property law; that ERISA does not interfere with the power of California courts to divide pension benefits between a husband and wife and to order direct payments of those benefits to a nonemployee spouse; [and] that California community property law does not relate to and is thus not included in federal regulation of any pension benefit plan."

The Court of Appeal also rejected petitioners' contention that the Superior Court's order requiring payment of pension benefits directly to Mrs. Johnston was an assignment or alienation of those benefits prohibited by Section 206(d)(1) of ERISA, 29 U.S.C. 1056(d)(1). In the court's view, the Superior Court's order did not require an assignment or alienation but merely affirmed Mrs. Johnston's existing property interest in the benefits (Pet. App. 14a-15a).

DISCUSSION

1. The Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, establishes uniform standards with respect to the administration and operation of private pension plans. In enacting this legislation, Congress sought to reduce the burden of meeting the requirements of the new federal law by insulating pension plans from possibly inconsistent or duplicative laws of the individual states. It therefore provided in Section 514(a) of ERISA, 29 U.S.C. 1144(a), that "the provisions of this title * * * shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan [subject to ERISA]."

The legislative history demonstrates that Congress consciously chose a broad preemption principle. In its initial formulation, the preemption provision encompassed only those laws which related to subjects covered by the Act. See, *e.g.*, H.R. 2, 93d Cong., 2d Sess. § 699 (1974). However, in conference, the preemption provision was broadened to the present version encompassing *all* state laws relating to employee benefit plans subject to the Act. As one of the managers of the bill explained on the House floor, Congress intended to apply "this principle [of preemption of state law] in its broadest sense to foreclose any non-Federal regulation of employee benefit plans. Thus, the provisions of section 514 would reach any rule, regulation, practice or decision of any State, subdivision thereof or any agency or instrumentality thereof * * * which would affect any employee benefit

plan [subject to ERISA]" (120 Cong. Rec. 29197 (1974) (remarks of Rep. Dent)).

In light of this clear expression of legislative intent, the federal courts that have considered the scope of Section 514 have held in a variety of contexts that ERISA preempts state law. In reaching this result, the courts have adhered to Senator Williams' observation at the time of ERISA's enactment that the preemption rule should "apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which may have the force or effect of law" (120 Cong. Rec. 29933 (1974)). See, *e.g.*, *Azzaro* v. *Harnett*, 414 F. Supp. 473, 474 (S.D.N.Y. 1976), aff'd, 553 F.2d 93 (2d Cir.), cert. denied, 434 U.S. 824 (1977) (state without jurisdiction to inquire into the status of a plan participant); *Hewlett-Packard Co.* v. *Barnes*, 425 F. Supp. 1294 (N.D. Cal. 1977), aff'd, 571 F.2d 502 (9th Cir.), cert. denied, 439 U.S. 831 (1978) (ERISA preempts California statute regulating certain welfare plans); *Standard Oil Co.* v. *Agsalud*,. 442 F. Supp. 695 (N.D. Cal. 1977), appeal pending, No. 78-1095 (9th Cir.) (ERISA preempts Hawaii statute requiring pre-paid health insurance coverage of state workers). See also *Wadsworth* v. *Whaland*, 562 F.2d 70 (1st Cir. 1977), cert. denied, 435 U.S. 980 (1978); *Bell v. Employee Security Benefit Association*, 437 F. Supp. 382, 385-387 (D. Kan. 1977).

In both of the instant cases, the decisions below upheld the community property claims of ex-spouses of participants in pension plans covered by ERISA to

a share of the benefits covered by such plans. In so ruling, two districts of the California Court of Appeal rejected the pension plans' argument that Section 514 of ERISA preempts California community property law. In No. 78-1422, the Fourth Appellate District concluded that ERISA does not bar a state court from requiring the pension plan to write two monthly checks instead of one (J.S. App. 11). In No. 78-1445, the Second Appellate District followed the analysis in *Stone* v. *Stone*, 450 F. Supp. 919 (N.D. Cal. 1978), appeal pending, No. 78-2313 (9th Cir.). There, the court concluded that the California community property laws "affect employee benefit plans but * * * do not relate to them within the meaning of § 514(a)" (450 F. Supp. at 932).

2. While we disagree with the rationale of the decisions below, we believe that the judgments in favor of respondents are correct and that accordingly there is no need for review by this Court.

a. The courts below attempted to resolve the issue by holding that the preemption principle of Section 514 of ERISA has no application to community property law because "[t]he laws relating to marital dissolution are uniquely local in nature" (78-1445 Pet. App. 11a). As the Court of Appeal for the Second Appellate District saw the matter, Section 514 was "intended to affect only laws *relating to* employee benefit plans and not to preempt any state law with only a tangential relationship to ERISA" (*id.* at 13a; emphasis in original).

We submit that this analysis is at odds with the statutory language and legislative history of ERISA, which shows that, in enacting Section 514, Congress intended to "effect the broadest possible preemption of state law." *Francis* v. *United Technologies Corp.*, 458 F. Supp. 84, 86 (N.D. Cal. 1978). Preemption cannot turn upon whether the state law is "uniquely local" or "tangential" in its relationship to the pension plan, because such determinations are inherently subjective. More important, they are not the criteria Congress chose to employ in Section 514. Congress provided that *all* state laws affecting private pensions are preempted by ERISA, and it is thus not open to the courts to pick and choose candidates for preemption on the basis of characteristics deemed to be uniquely a matter of state concern or insufficiently related to the federal scheme. Accordingly, the California state law, by requiring the pension plans to pay benefits to persons who are not "participants" in the plans, necessarily "relate[s] to [the] employee benefit plan[s]" within the meaning of Section 514.

b. Although the courts below erred in concluding that Section 514 does not preempt state community property law, we believe that their judgments are correct on the basis of an implied exception to the anti-assignment provisions of ERISA. In the prefatory Findings and Declarations of Policy of ERISA, Congress stated its intention that the Act be interpreted in accordance with the paramount goal of providing protection for "employees and their beneficiaries." Section 2(a), 29 U.S.C. 1001(a). The

anti-assignment provisions of ERISA—Section 206 (d)(1), 29 U.S.C. 1056(d)(1), and Section 1021(c), 26 U.S.C. 401(a)(13)—are an integral part of the congressional effort to protect these classes of persons.

Thus, the House Report states that the anti-assignment provisions are intended to "ensure that the employee's accrued benefits are actually available for retirement purposes." H.R. Rep. No. 93-807, 93d Cong., 2d Sess. 68 (1974). Consistent with this purpose, these provisions not only forbid an employee from improvidently bargaining away his retirement support through voluntary assignment or alienation, but also prohibit attachment of the pension by creditors. The Conference Report explicitly states that the terms "assignment" and "alienation" include involuntary alienations, such as those resulting from garnishment. H.R. Conf. Rep. No. 93-1280, 93d Cong., 2d Sess. 280 (1974).

While the legislative history of ERISA shows that Congress sought to protect employees' pension benefits against the claims of general creditors, it is silent as to the status of claims by spouses of participants. But many federal statutes include anti-assignment provisions similar to that of ERISA,[1] and the courts have consistently held that these comparable provisions do not bar enforcement of family support decrees in common law states. See *Schlaefer* v. *Schlaefer*, 112 F.2d 177 (D.C. Cir. 1940); *In re Flanagan*,

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[1] See 38 U.S.C. 3101 (Veterans Benefits); 5 U.S.C. 8346 (Civil Service Annuities); 45 U.S.C. 231m (Railroad Retirement Benefits); and 42 U.S.C. 407 (Social Security Benefits).

31 F. Supp. 402 (D. D.C. 1940). The Second Circuit has likewise recently held that an exception to ERISA's anti-assignment provisions should be implied to allow the enforcement of family support orders attaching the pension benefits of a participant in pay status. See *American Telephone and Telegraph Co.* v. *Merry*, 592 F.2d 118 (1979). Accord, *Cody* v. *Riecker*, 454 F. Supp. 22 (E.D. N.Y. 1978), aff'd, 594 F.2d 314 (2d Cir. 1979); *Cartledge* v. *Miller*, 457 F. Supp. 1146 (S.D. N.Y. 1978).

To be sure, these decisions do not address the question presented in the instant cases as to the status of decrees based on community property claims. We believe, however, that the considerations that prompted the Second Circuit to find an implied exception in the anti-assignment provisions of ERISA to uphold family support decrees offer a useful analogy in determining the validity of the decrees whose enforceability is at issue in these cases. The purpose of the anti-assignment provisions of ERISA is to protect "employees and their beneficiaries." [2] While not a "beneficiary" under the statute (Section 3(8), 29 U.S.C. 1002(8)), the non-employe ex-spouse

[2] Appellant's argument (J.S. 24-27) that the National Labor Relations Act bars state courts from dividing a pension covered by ERISA begs the question. The particular provision upon which appellant relies states that employers may contribute to pension trusts named "for the sole and exclusive benefit of the employees of such employer, and their families and dependents * * *" (29 U.S.C. 186(c)(5)). Here, the implied exception to the anti-alienation provision assumes that there is a family obligation owed by the plan participant to the ex-spouse.

in a community property state is as deserving of such protection as an ex-spouse in a common law jurisdiction. Given the congressional intent to establish uniform standards of pension administration to protect employees and their families, we believe that respondents' claims in these particular factual settings can be upheld on the basis of an implied exception to the anti-assignment provisions without trenching upon the broad preemption principle inherent in Section 514. As the district court observed in *Stone* v. *Stone*, *supra*, 450 F. Supp. at 926, "[i]t would be ironic indeed if a provision designed in part to ensure that an employee spouse would be able to meet his obligations to family after retirement were interpreted to permit him to evade them with impunity after divorce."

c. *Wissner* v. *Wissner*, 338 U.S. 655 (1950), and *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572 (1979), upon which appellant (J.S. 14-15) and petitioners (Pet. 9, 12) rely, are not to the contrary. In *Wissner*, an army officer named his mother and father as beneficiaries under his National Service Life Insurance Policy, but made no provision for his wife. The National Service Life Insurance Act of 1940 provided that the insured " 'shall have the right to designate the beneficiary or beneficiaries of the insurance * * * and shall * * * at all times have the right to change the beneficiary or beneficiaries * * *.' " 338 U.S. at 658. Despite this provision, a California state court held that the proceeds of the insurance policy, which had been purchased with community funds, were com-

munity property and ordered that one-half of the proceeds be paid to the widow by the named beneficiaries. *Ibid.*

This Court reversed. Citing the provision of the Act that granted the insured the right to designate the beneficiary of the policy, the Court concluded that "Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other" (338 U.S. at 658). As the Court observed, "[w]hether directed at the very money received from the Government or an equivalent amount, the judgment below nullifies the soldier's choice and frustrates the deliberate purpose of Congress" (*id.* at 659). See also *Free* v. *Bland*, 369 U.S. 663 (1962). By contrast, ERISA has no provision comparable to the choice-preserving provision that the Court in *Wissner* found to be incompatible with the enforcement of a community property interest in the life insurance policy. *Wissner* is therefore distinguishable.

Hisquierdo v. *Hisquierdo, supra*, is likewise inapposite. There, the Court held that the anti-assignment provisions of the Railroad Retirement Act, 45 U.S.C. 231m, prohibited the California courts from awarding to non-employee spouses, pursuant to state community property law, a share in the pension benefits of an employee-participant in the federal railroad retirement system. As in *Wissner*, the decision turned on the specific provisions of the pertinent federal statute. The Court observed that Congress explicitly provided in the Railroad Retirement Act that

a spouse's benefits terminated upon divorce (439 U.S. at 585) and made a deliberate decision to allow garnishment of benefits pursuant to common law support obligations but not pursuant to community property law (*id.* at 587). ERISA has no such comparable provisions. Indeed, the Court remarked in *Hisquierdo* that "[d]ifferent considerations might well apply where Congress has remained silent on the subject of benefits for spouses, particularly when the pension program is a private one which federal law merely regulates" (439 U.S. at 590 n.24). The Court therefore added that its holding in *Hisquierdo* "intimates no view concerning the application of community property principles to benefits payable under programs that possess these distinctive characteristics" (*ibid.*).

3. Because the judgments of the courts below are correct, we do not believe that it is necessary for this Court to grant review in these cases simply to substitute the proper rationale. While there is an increasing amount of litigation on the issue whether a non-employee spouse can assert a community property claim to a share of benefits of a pension covered by ERISA,[3] the California state court decisions thus far favor such claims. See also *In re Marriage of Lionberger*, 158 Cal. Rptr. 535 (Ct. App. 1979).

Finally, while there is conflict at present among the district courts in California concerning the issue

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[3] An appeal seeking review of three other California state court decisions presenting the same question is now pending in this Court. See *Carpenters Pension Trust Fund for Northern California* v. *Campa, Durkin and Bryant*, No. 78-1881.

presented in these cases,[4] this conflict undoubtedly will be resolved by the Ninth Circuit's decision in *Stone* v. *Stone, supra.*[5] The court of appeals in that case may well uphold the non-employee spouse's claim on the basis of an implied exception to the anti-assignment provisions of ERISA.[6] Plenary consideration by this Court of the questions presented would therefore be premature at this time.

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[4] Compare *Stone* v. *Stone, supra,* and *Carpenters Pension Trust* v. *Kronschnabel,* 460 F. Supp. 978 (C.D. Cal. 1978), appeal pending, No. 79-3031 (9th Cir.), with *Francis* v. *United Technologies Corp., supra.*

[5] We are advised by the Clerk of the Ninth Circuit that oral argument in *Stone* should be scheduled no later than June 1980.

[6] The Secretary of Labor has filed a brief amicus curiae in *Stone,* urging affirmance on the basis of an implied exception to the anti-assignment provisions of ERISA. Respondents in No. 78-1445 contend (Br. in Opp. 5 n.2) that the government's position is the product of "unusual reasoning." We believe that the construction of ERISA offered above is faithful to the legislative history concerning preemption yet fully accommodates substantial state interests.

CONCLUSION

The appeal in No. 78-1422 should be dismissed for want of a substantial federal question. The petition for a writ of certiorari in No. 78-1445 should be denied.

Respectfully submitted.

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